90-1867

Supreme Court, U.S.
FILED
JAN 17 1991
OFFICE OF THE CLERK

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,1990

AMBROSE W. J. CLAY, PETITIONER

v.

EXCHANGE MUTUAL INSURANCE COMPANY

RESPONDENT.

"PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TENNESSEE,MIDDLE DIVISION"

PETITION FOR WRIT OF CERTIORARI

AMBROSE W. J. CLAY, PRO SE
P.O. BOX 22642
Nashville, Tennessee 37202

QUESTIONS PRESENTED

1. WHETHER, the Exchange Mutual Ins. Company had the right to deny the insured payment under the policy, when a demand had been made for payment according to the law, but said Insurance Company refused to pay the claim, alleging grounds based upon false premises, and a perjurious sworn affidavit, and other affidavits, which purposely omitted essential material facts,to the extent that the court granted Summary Judgment and denied petitioner a jury trial previously demanded.

2. WHETHER, the courts involved had authority to deny a Jury Trial demanded pursuant to the Seventh Amendment to the constitution of the United States, and Rule 38, (ROFP), which the State of Tennessee adopted by constitution, and whether such denial in essence violated Petitioner's Civil Rights

under 42 § 1983, (USC), and his property interest rights under the Fifth Amendment to the constitution of the United States.

TABLE OF AUTHORITIES

CASES Page

Mora v. Mut. Ins. Co. 12 Abb Prac.(N.Y.) 310

Noble v. Railroad Co. 147 U.S., 165 S. CT. 271, 27 L.Ed. 123

Johnson v. Nelms, 100 S.W. 2d 648(Tenn)

Town of Smyrna v. Ridley, 730 S.W. 2d 318, 321 (Tenn)

BEST AVAI

TABLE OF CONTENTS

	Page
PRAYER	1
OPINIONS BELOW	
STATEMENT OF JURISDICTION	2
CONSTITUTIONAL PROVISION	3
TREATIES INVOLVED	3
STATUTORY PROVISION	4
STATEMENT OF THE CASE.....	4-7
REASONS FOR GRANTING THE WRIT	7-10
CONCLUSION	10

APPENDIX:

1. Agreed Order filed 7-13-89, signed by R. Petty, D.C. & Statement of A. Clay.

A. Order, Sixth Circuit Court dated 10-31, and November 8, 1989.

B. Order, Sixth Circuit Court,dated 1-12-90.

C. Order, Court of Appeals, dated 4-4-90.

D. Orders of Court of Appeals of Tennessee, dated 4-2 and 17, 1990

E. Orders, S.Ct. of Tenn., dated 6-25-90.

LABLE COPY

F. Order, Supreme Court of Tenn.dated respectively, 8-90, 8-28-90,9-20-90 and Motion and Affidavit of Petitioner, dated 9-20-90.

TABLE OF AUTHORITIES

CASES

Page(s

Mora v. Mut Ins. Co., 12 Abb Prac.N.Y. 310

Noble v. Railroad Co. 147 U.S. 165 S,Ct. 271,27 L.ed. 123

Johnson v. Nelms, 100 S.W.2d 648(Tenn)1937

Town of Smyrna v.Ridley, 730 S.W.2d 318,321

CONSTITUTIONAL PROVISIONS

Fourteen Amendment to the Constitution of the United States and,
the Seventh Amendment to the Constitution of the United States, and Rule 38 (a) Rules of Federal Procedure, Stat. 48, 1064 (USC) and Title 28.

STATUTES

(USC) 42 § 1983, 48 Title 28

TREATIES

N/A

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

IN THE MATTER OF: AMBROSE W. J. CLAY

PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE, AT NASHVILLE

PRAYER

The petitioner, Ambrose W. J. Clay, Pro Se, having been granted extension of time within which to file the petition herein, in which, said extension of time was extended to Jan. 17, 1991, respectfully prays that a writ of certiorari issue to review the Order entered by the Supreme Court of Tennessee, denying the Application for Permission to appeal on 6-25-90, Affirming the Opinion of the Court of Appeals of Tennessee, Middle Section and denying on the 20th day of Aug. 1990, the petition for rehearing herein.

The Opinion of the Court of Appeals,Affirming

the Sixth Circuit Court's Order by dismissing petitioner's complaint has not been reported, and is attached as Appendix (C). The Order of the Sixth Circuit Court is attached as Appendix "A" dated October 13, 1989. Subsequent Orders are attached as Appendix "B", Court of Appeals Appendix "D", the Supreme Court of Tennessee orders are attached as Appendix "F" unsigned, except for the words PER CURIAM, in this Appendix are a Motion of the Petitioner, dated September 28, 1990.

STATEMENT OF JURISDICTION

The Petitioner claims Jurisdiction of this Court on the basis of Article III,§ 1."The Judicial Power of the United states, shall be vested in one Supreme Court, and such inferior courts as the Congress may from time to time ordain and established,...and, also on the basis of Federal Question Jurisdiction,28(USC)

§ 133 and Rule (1.) of this Honorable court.

CONSTITUTIONAL PROVISIONS INVOLVED

Article III, § 2 of the Constitution of the United States provides in relevant part: "The Judicial Power shall extend to cases in Law and Equity, arising under this constitution, the laws of the United States, and Treaties made or which shall be made under their Authority,---to cases affectomg Ambassodors, other Public Minister and consuls,--to all cases of admiralty and maritime Jurisdiction--to controversies to which the United States shall be a party, to controversies between two or more states,--between citizens of the same State claiming Land under grants of different states, and between a State, or the citizens thereof; and foreign States, citizens or subjects.

TREATIES INVOLVED

N/A

STATUTORY PROVISIONS INVOLVED

42 (USC) § 1983, (USC) Title 28, Stat.48-1064.

STATEMENT OF THE CASE

This case involves Insurance coverage under Renewal No. LV-158213, and Policy No. LV-168015,issued by the Exchange Mut. Fire Insurance Company on Dec. 23, 1987. Petitioner is the Insured under this policy. Subsequent to issued policy, the house suffered damages and losses by fire.

The Ins. Co., Representative promised to settle the claim promptly, and informed the Insured that checks were ordered and were being cut, and a check would be disbursed to L.A. Newman and Company who at the time held a mortgage on the premises, and that the bal. would be paid to the Insured. The losses and damages occurred on Mar. 7, 1988, upon which,

the Insurance Company employed an Ins. Agency, namely, the Professional Ins. Adjuster, Incorporated to investigate the causes of the fire and to make recommendations.

The Ins. Adjuster, Inc., recommended that the Respondent not to pay the claim. This recommendation was based upon false premises and unsubstantiated facts,thus, the Insurance Co. paid the mortgagee,but refused to pay the Insured. This refusal continued until 60 days had passed upon which the Insured had made demands for payment.

The Department of Commerce and Banking of Tennessee was asked to investigate the Respondent, in order to effect a settlement. It was very obvious the Respondent was determined they would not pay the claim.

This refusal continued until the Depart-

ment of Commerce and Banking informed the Insured, that the Insurance Company would not pay the claim, and advised that this matter be settled in the courts.

The Petitioner filed a suit in the Circuit Court for Davidson County, Tennessee.

The Respondent answered the same,whereupon the case was scheduled to be heard before a Jury, and the same was set on the Court's Jury Docket for the 30th day of Oct. 1989, at 9 a.m.

The Respondent filed a Motion for SUMMARY JUDGMENT on or about the 27th day of Oct., 1989, exactly 3 days before the trial was scheduled to be heard by the court. The Petitioner filed a pleading in opposition to the Motion for Summary Judgment, averring that the materials which had been presented were matters for a Jury to decide.

The Petitioner Moved to overrule the Motion

for Summary Judgment, and stated that this cause was to be heard in d days hence. However, the court overruled Petitioner's Motion and granted Summary Judgment.

Because of this, the basis rights of Petitioner wasdenied. The Court by it action nullified the Jury Trial which had been demanded in the Complaint. The Order setting this matter for hearing on the Jury's Docket is attached in Appendix "1"

Note the Ins. co. is
to as Respondent or Appellee.

REASONS FOR GRANTING THE WRIT

According to the Seventh Amendment to the constitution of the United States, and the constitution of the State of Tennessee,and pursuant to the Rules of Civil Procedure for the State of the State of Tennessee and pursuant to the Rules of Federal Procedure, which was adopted in part by the State of Tennessee, states as follows:

RULE 38 "JURY TRIAL OF RIGHT"

"The right of trial as declared by the constitution or existing laws of Tennessee shall be preserved to parties inviolate"

38.01 "DEMAND"

"Any party may demand a trial by Jury of any issue triable of right by demanding the same in any pleading specified in Rule 7.01 or by endorsing the demand upon any pleading when filed orwritten demand filed with the clerk with notice to all parties, within 15 days after the service of the fact"

It is very obvious, that the responsibility for procuring the rights of litigants rest with the State of Tennessee, or the courts thereof. When it fails to obtain these rights, and particularly, when a demand has been made by pleadings and by application for Permission to appeal to the Supreme Court of Tennessee, and subsequently, was denied without considering several important questions of law and facts,then it becomes the duty of this Honorable Court to review the actions of the courts below.

Petitioner, had repeatedly demanded an an unbiased jury try the issues of facts. Petitioner has raised, which includes the following:

a. The fact, that Petitioner was insured.

b. The fact that Respondent did not act in good faith, and witheld materials CONSIDERED TO BE FACTUAL

C. The fact, that the affiants of the Respondent, by sworn affidavits, in ESSENCE COMMITTED PERJURY OR OMITTED ESSENTIAL MATERIAL FACTS.

Furthermore, this court should review the actions of the courts below,because a deprivation of Procedural Due Process affecting Petitioner's rights were wrought, in that a hearing or trial was denied him and in lieu thereof, an interlocutory Judgment was entered.

Thus, a property interest right without due process of law guaranteed under the

Fifth Amendment of the constitution of the United States was denied, which in turn is a violation of Petitioner's Civil Rights.

C O N C L U S I O N

For the foregoing reasons, the Petitioner, respectfully prays that this Honorable Court issue a writ of certiorari to review the Judgment of the Supreme Court of the State of Tennessee.

Respectfully Submitted

AMBROSE W. J. CLAY, PRO SE
P.O. Box 22642, Nashville
Tennessee 37202

APPENDIX "1"

GENERAL STATEMENT OF PETITIONER

Inasmuch, as a provision of the State of Tennessee constitution provides in relevant part: "That right of trial by jury as declared by the constitution or existing laws of Tennessee, shall be preserved to parties inviolate" and, as such, the recitation of 28(USC) § 2403(b) may be applicable and, the Attorney General of Tennessee shall be served the petition herein for appropriate consideration as the Attorney General deems proper, and said service of document, and pleadings herein have by facts alleged, that the constitutionality of a Statute of said State was drawn into question, and that this declaration is in compliance with USC § 1746.

STATE OF TENNESSEE

COUNTY OF DAVIDSON

Comes Ambrose W. J. Clay, Pro Se, first being duly sworn or on Affirmation states that

the Attorney General of the State of Tenn., and Counsel for Respondent will be served by sufficient U. S. Postage at the last known addresses, either by first class mail.

Signed AMBROSE W. J. CLAY

SWORN,SUBSCRIBED OR AFFIRMED before me T. Davis, A Notary Public in and for said State and County, this the 2 day of February 1991, at Nashville, Tennessee.

Signed T Davis

My Commission expires Sept. 24, 1994.

APPENDIX "A"

IN THE SIXTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

AMBROSE W.J. CLAY	)	
PLAINTIFF?Counter-Defendant	)	
	)	
vs.	)	
	)	
EXCHANGE MUTUAL INSURANCE COMPANY,	)	#89C-328
Defendant/Counter/Plaintiff.	)	
	)	

ORDER

This cause came on to be heard on the 7th day of July, 1989, before the Honorable Matthew J. Sweeny, on Plaintiff's Motion to set, and it appearing to the satisfaction of the court, as evidenced by signatures of Plaintiff and Counsel for Defendant herein that this case should be set on this Court'S Jury Docket for Oct. 30, 1989, as agreed to.

It is therefore ORDERED that this case is hereby set on this Court's Jury Docket for the 30th day of October, 1989,at 9:00 a.m.

Signed R. Petty D. C.
~~-JUDGE-~~
non Minute Entry

APPROVED FOR ENTRY

Ambrose Clay

(signed with permission by
D. Robert Black, Jr.)
Nashville, TN 37202

STWEWART, ESTES & DONNEL

By: D. ROBERT BLACK, JR. # 11411
424 Church Street, 14th Floor
Third National Financial Center
Nashville, TN 37219

IN THE SIXTH CIRCUIT COURT FOR

DAVIDSON COUNTY, TENNESSEE

AMBROSE W. J. CLAY

Plaintiff/Counter-Defendant)
)
vs.)
) # 89C-328
EXCHANGE MUTUAL INSURANCE)
COMPANY)
)
Defendant/Counter/Plaintiff.)
)

ORDER

This cause came on to be heard on the 27th day of Oct. 1989, on Motion for Summary Judgment of Defendant-Counter/Plaintiff, Exchange Mutual Insurance Company. Motion of Plaintiff for Defendant to pay cost, and Motion of Defendant/Counter-Plaintiff to continue and it appearing to the Court, having viewed said Motions and all other pleadings filed in this case and having heard argument of counsel for Defendant-Counter-Plaintiff and Plaintiff-Counter-Defendant, Pro Se That the Motion for Summary Judgment of Defendant Counter-Plaintiff Exchange Mutual Insurance Co., vs Ambrose W. J. Clay, is well

taken and should be granted. But in the action of Exchange Mutual Insurance Co., Counter-Plaintiff. vs Ambrose W. J. Clay, Counter-Defendant is not well taken and should be denied, that the Motion of Plaintiff for Defendant to pay costs should be denied, and that the Motion of Defendant-Counter-Plaintiff for continuance should be denied;

It is, therefore, ORDERED, ADJUDGED and DECREED that the Motion for Summary Judgment o Defendant-Counter-Plaintiff, Exchange Mutual Ins. Company in the action of AMBROSE W. J. CLAY, Plaintiff versus Exchange Mutual Ins. Company, Defendant, is hereby granted and sa cause dismissed with prejudice; in the actio of Exchange Mutual Insurance Company,Counter Plaintiff versus Ambrose W. J. Clay, Counter Defendant, said Motion is hereby denied, and this action remains set for trial on the 30t of October, 1989.

It is further ORDERED that Motion of Defend

BEST AVAILAB

Counter-Plaintiff to continue is hereby denied.

It is further ORDERED that the costs of this action are hereby taxed to Plaintiff, Ambrose W. J. Clay, for which execution may issue as necessary.

ENTERED this 31st day of Oct. 1989.

Signed T.W. Brothers
JUDGE

LE COPY

APPENDIX "B"

APPENDIX "C"

IN THE COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

AMBROSE W. J. CLAY Plaintiff/Appellant, vs. EXCHANGE MUTUAL INSURANCE COMPANY, Defendant/Appellee	)	Appeal No. 01-A-01-9003-CV-00127

ORDER

On April 3, 1990, Appellee Moved this court to dismiss this Appeal and impose sanctions. Said Motion was held in the clerk's office awaiting response from Appellant.

On April 4, 1990, without actual knowledge of said Motion, this court, on its own Motion dismissed the Appeal.

Upon consideration of the Motion for sanctions, it is ordered that said Motion be overruled.

ENTER Apr 12, 1990.

Signed HENRY E. TODD, PRESIDING JUDGE

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE

APPENDIX "D"

IN THE COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

AMBROSE W. J. CLAY	)	
Plaintiff Counter-Defendant-Appellant,	)	
vs.	)	Appeal No.
EXCHANGE MUTUAL INSURANCE COMPANY,	)	01-A-01-9003-CV-00127
Defendant-Counter Plaintiff-Appellee	)	

ORDER

It appears from the record as follows:

On Nov. 8, 1989, the Trial Court entered an Order disposing of all remaining issues and parties before the Court.

On Nov. 16, 1989, the Plaintiff filed a Motion as follows:

> MOTION FOR A NEW TRIAL AND OR A MOTION TO SET ASIDE THE ORDER ENTERED AND OR AMEND THE ORDER AS TO COSTS SEVERALLY APPLIED TO THE PARTIES OF THE SUITS

Pursuant to Local Rules of Practice, Rule 12.01 et seq. Ambrose W. J. Clay, Plaintiff

herein Moves the Court for one or two Orders as in the Caption for the following reasons:

1. No conclusion of Lwas was entered as to the facts alleged.

2. The Finding of Facts were precluded as to all of the facts raised by the Plaintiff.

3. The Plaintiff was denied a Jury Trial as demanded by the issuing of an interlocutory Order, voided by scintilla of evidence, and for reasons incorporated in the Memorandum of law filed herein.

On Dec. 11, 1989, the Trial Court entered an Order overruling said Motion.

On Jan. 3, 1990, Plaintif filed the following motion:

M O T I O N

Comes the Plaintiff, Ambrose W. J. Clay, Pro Se, and Moves the Court for a Final Order in this cause for the following reasons:

To perfect Plaintiff's Appeal to the Court Of Appeals of Tennessee, Middle Section At Nashville.

To prepare a Narrative Statement of Evidence, and to delineate the issues to be presented to the Appellate Court and for reasons set forth in the Memorandum below.

M E M O R A N D U M

The Order entered on or about the 6 day of December, 1989, is exceedingly different when contrasted with a Final Order. There are no conclusion of fact and Law upon which the court based the Order entered.
(see Garson v. New York,48 Hun. 620, 1 N. Y.S. 254.(Garrison v. Doougherty, 18 S.C. 488)

The issues raised by the Plaintiff should be addressed, or in the alternative, an Order affecting these issues should be made Final.

On Jan. 12, 1990, the Trial Court entered an order overruling the Jan. 3,1990, Motion.

On Jan. 23, 1990, Plaintiff filed the following notice of appeal:

This is to give notice that the Plaintiff herein will appeal the Judgment of the Sixth Circuit Court for Davidson County, Tennessee, entered Jan. 12, 1990, to the Court of Appeals for the State of Tennessee, Middle Section at Nashville within the time prescribed by law.

The notice of appeal was not timely filed. T.R.A.P. Rule 4.

This appeal is dismissed. The costs thereof are adjudged against appellant.

The cause is remanded to the Trial Court for enforcement of its Judgment.

ENTER APR 4, 1990.

Signed

HENRY F. TODD, PRESIDING JUDGE

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE

APPENDIX "E"

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

AMBROSE W. J. CLAY	)	
PLAINTIFF/APPELLANT	)	
vs	)	DAVIDSON LAW
EXCHANGE MUTUAL INSURANCE COMPANY	)	FILED JUN 25, 1990 A.B. NEIL, JR. CLERK

ORDER

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be denied.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

AMBROSE W. J. CLAY	)	
Plaintiff/Appellant	)	
vs.	)	FILED AUG 20 1990 A.B.NEIL, JR.
EXCHANGE MUTUAL INSURANCE COMPANY	)	CLERK
Defendant/Appellee	)	DAVIDSON LAW

ORDER ON PETITION TO REHEAR

The petition to rehear filed by appellant in this cause has been considered and is denied.

Enter this 20th day of August, 1990

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

AMBROSE W. J. CLAY,

Plaintiff-Appellant,

vs.

EXCHANGE MUTUAL INSURANCE COMPANY

Defendant-Appellee

O R D E R

The plaintiff-appellant, Ambrose W. J. Clay, Pro Se, has filed in this court a Motion to Stay Mandate, upon consideration of the Motion, this court is of the opinion that the Motion should be denied.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

AMBROSE W. J. CLAY)
)
Plaintiff/Appellant,) RECEIVED
) 9-28-90
vs.) DAVIDSON LAW
)
EXCHANGE MUTUAL INSURANCE)
COMPANY,)
)
Defendant/Appellee.)
)

MOTION FOR SIGNATURES AND AUTHORITY OF THE PER CURIAM DENYING MOTION TO STAY MANDATE OR IN THE ALTERNATIVE A SUBSEQUENT RECONSIDERATION SHOULD BE EFFECTED STAYING MANDATE

Comes the Appellant and Moves the full Court by majority vote, signed, to grant the captioned Motion for reasons previously stated.

This Motion is filed pursuant to Rule 20 and Rule 42 (c) & 9d) T.R.A.P., and the affidavit below.

Respectfully submitted

Signed_____

AMBROSE W. J. CLAY, PRO SE,
P.O. Box 22642,Nashville, TN.
37202

A F F I D A V I T

STATE OF TENNESSEE
COUNTY OF DAVIDSON

INFORMATION COPY

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

AMBROSE W. J. CLAY	)	
Plaintiff/appellant,	)	
	)	FILED 20 SEP 1990
vs.	)	A.B. NEIL, JR.
EXCHANGE MUTUAL INSURANCE COMPANY	)	CLERK
	)	DAVIDSON LAW

O R D E R

The motion to reconsiderstay of mandate filed by appellant on 5 Sept., 1990 is denied at appellant's costs.

PER CURIAM

Comes Ambrose W. J. Clay, first being duly Sworn states that a review of the Tennessee Supreme Court in this cause,should be reviewed by the Supreme Court of the United States of America.

The Affiant saith not

SWORN OR AFFIRMED BEFORE ME_____A Notary Public, this the 28 day of Sept, 1990, at Nashville,Tennessee.

Signed_____
NOTARY PUBLIC

My Commission expires_____

CERTIFICATE OF SERVICE

I certify that an exact copy of the foregoing Motion has been mailed to the Honorable D. Robert Black, Jr.#11411,at 424 Church Street, 14th Floor Third National Financial Center, Nashville, TN. 37219,this the 28 day of Sept. 1990.

Signed _____
Ambrose w. J. Clay